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8-272A132
Date SEP 29 1978
Fee $ 50
ICC Washington, D. C.

9725 / A
RECORDATION NO. .... Filed 1425
SEP 29 1978 -8 49 PM
INTERSTATE COMMERCE COMMISSION

September 28, 1978

9725
RECORDATION NO. .... Filed 1425
SEP 29 1978 -8 49 PM
INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

Enclosed for recordation pursuant to the provisions of Section 20c of the Interstate Commerce Act and the rules and regulations thereunder, as amended, are the original and two counterparts each of a Limited Recourse Note - Security Agreement dated September 28, 1978 and a Management Agreement dated September 28, 1978.

A general description of the railroad equipment covered by the enclosed documents is as follows:

Fifty (50) 50'6" 70-ton, single sheaved box-cars without side posts, with 10' sliding doors and rigid underframe, AAR Mechanical Designation XM, bearing reporting marks and numbers NSL 156015 through NSL 156021, inclusive, PT 201036 through PT 201071, inclusive, and MNJ 120510 through MNJ 120516, inclusive.

FEE OPERATION BR.
I.C.C.
SEP 29 2 41 PM '78
RECEIVED

The names and addresses of the parties to the enclosed documents are:

A. Limited Recourse Note - Security Agreement:

Debtor: Sherwin I. Pogrund
221 North LaSalle Street
Chicago, Illinois 60604

T. Kenney
Counterpart

Secured Party: Funding Systems Railcars, Inc.
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15238

B. Management Agreement:

Owner: Sherwin I. Pogrund
221 North LaSalle Street
Chicago, Illinois 60604

Manager: Funding Systems Railcars, Inc.
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15238

The undersigned is agent of the Secured Party and Manager mentioned in the enclosed documents for the purpose of submitting the enclosed documents for recordation and has knowledge of the matters set forth therein.

Please return the original and counterpart of the enclosed Limited Recourse Note - Security Agreement and Management Agreement to the undersigned or to the bearer hereof.

Also enclosed is a remittance in the amount of $100 in payment of recordation fees.

Very truly yours,

SPENGLER CARLSON GUBAR
CHURCHILL & BRODSKY,
As Agent for FUNDING SYSTEMS
RAILCARS, INC.

By Charles E. Matthews, Jr.
Charles E. Matthews, Jr.

Interstate Commerce Commission
Washington, D.C. 20423

9/29/78

OFFICE OF THE SECRETARY

Charles E. Matthews, Jr.
Spengler Carlson Gubar Churchill & Brodsky
280 Park Avenue
New York, N .Y. 10017

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 9/29/78 at 2:50pm, and assigned recordation number(s) 9725 & 9725-A

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

COPY 2

RECORDATION NO. 9725 Filed 1425

SEP 29 1978 -2 10 PM

INTERSTATE COMMERCE COMMISSION

LIMITED RECOURSE PROMISSORY NOTE - SECURITY AGREEMENT

$1,800,000 Date: September 28, 1978

FOR VALUE RECEIVED, the undersigned, SHERWIN I. POGRUND, having an office at 221 North La Salle Street, Chicago, Illinois 60604 ("Payor" or "Debtor"), promises to pay to FUNDING SYSTEMS RAILCARS, INC., a Delaware corporation having its principal office and place of business at 1000 RIDC Plaza, Pittsburgh, Pennsylvania 15238 ("Payee" or "Secured Party"), the principal sum of $1,800,000, together with interest thereon at the rate of 11% per annum commencing October 1, 1978. Subject to the provisions with respect to acceleration contained in Section 6 below and the provisions with respect to prepayment and deferral set forth in Section 5 below, principal and interest under this Note shall be payable in 148 consecutive combined monthly payments of principal and interest in the amount of $22,270.58 each, commencing on January 31, 1982 and ending on April 30, 1994; provided, however, that Payor, at his option, may pay (without additional interest or penalty) such combined monthly installments on a quarterly basis (by quarterly installments of $66,811.74) on the last day of January, April, July and October of each year commencing on January 31, 1982 with the last such quarterly payment being due and payable on April 30, 1994. The quarterly installments paid in each calendar year shall be credited in payment of the monthly installments due during such calendar year. Interest on the principal of this Note for the period from October 1, 1978 through December 31, 1978 in the amount of $49,500 has been paid simultaneously herewith by cashier's or certified check or by wire transfer and interest from January 1, 1979 through December 31, 1981 shall be payable in quarterly installments of $49,500 each payable on the last day of January, April, July and October of each year commencing January 31, 1979; provided, however, that the $49,500 interest payment due on January 31, 1979 and $36,833.33 of each $49,500 interest payment to be made hereunder on April 30, July 31 and October 31, 1979 shall be paid to Payee, simultaneously with the execution and delivery of this Note, by the delivery to Payee on the date hereof of a promissory note of even date of Payor to the order of Payee each in the principal amount of $160,000 (the "First Recourse Note") (it being understood and agreed that, as a result of this proviso, and in addition to the payments to be made by Payor to Payee pursuant to the First Recourse Note, on April 30, July 31 and October 31, 1979), Payor shall only be obligated to pay to Payee $12,666.67); and provided further, that $40,000 of each $49,500 interest payment to be made hereunder on January 31, 1980 and on the last day of each of the three quarterly periods thereafter shall be paid to Payee, simultaneously with the execution and delivery of this Note, by the delivery to Payee on the date hereof of a promissory note of even date of Payor to the order of Payee in the principal amount of $160,000 (the "Second Recourse Note") (it being understood and agreed that, as a result of this proviso, and in addition to the payments to be made by Payor to Payee pursuant to the Second Recourse Note, on January 31, 1980 and on the last day of each of the three quarterly periods thereafter, Payor shall only be obligated to pay to Payee $9,500); and provided further, that $29,875 of each $49,500 interest payment to be made hereunder on January 31, 1981 and on the last day of each of the three quarterly periods thereafter shall be paid to Payee, simultaneously with the execution and delivery of this Note, by the delivery to Payee on the date hereof of a promissory note of even date of Payor to the order of Payee in the principal amount of $119,500 (the "Third Recourse Note") (it being understood and agreed that, as a result of this proviso, and in addition to the payments to be made by Payor to Payee pursuant to the Third Recourse Note, on January 31, 1981 and on the last day of each of the three quarterly periods thereafter, Payor shall only be obligated to pay to Payee $19,625) (the First Recourse Note, the Second Recourse Note and the Third Recourse Note are hereinafter collectively referred to as the "Recourse Notes".) The payment to be made under each of the Recourse Notes shall be deemed to have been made, in the proportionate amounts specified above, on the last day of each of the quarters in respect of which such payment is to be made and shall be applied to interest accruing during the calendar year in which such Recourse Note is paid.

1. Background.

Payor and Payee are parties to an agreement of even date (the "Purchase Agreement"), pursuant to which Payee has sold and assigned to Payor the equipment (the "Equipment") listed and described in the Purchase Agreement and the Equipment is being managed by Payee pursuant to the Management Agreement of even date (the "Management Agreement"). This Note is referred to in the Purchase Agreement as the Limited Recourse Note or, together with the Recourse Notes, as one of the Notes. In order to induce Payee to accept this Note, Payor is granting to Payee hereunder a lien with respect to the Equipment, pursuant to which payment of this Note is secured on the terms and conditions hereinafter provided.

2. Definitions.

Unless the context of this Note indicates otherwise, all terms defined in the Purchase Agreement or the Management Agreement shall have the same meanings as are ascribed to such terms therein.

3. Security Interest.

To secure the payment when due of principal and interest under this Note and the payment and performance by Payor, when due, of all obligations and liabilities of Payor to Payee under this Note, the Purchase Agreement, the Management Agreement, the Remarketing Agreement, this Agreement and any other Document (other than the Recourse Notes) (such payment under this Note, and such payment and performance of such obligations and liabilities are hereinafter referred to collectively as the "Obligations"), Payor shall and hereby does grant, convey, assign and transfer to Payee, subject and subordinate, however, to (i) the rights of the holder of the Lien (the "Senior Lienholder"), (ii) the rights of NRUC under the NRUC Agreement and Underlying Users under Underlying Agreements, and (iii) the rights of Payee under the Management Agreement, a purchase money security interest in and to the Equipment, and all additions, replacements and attachments thereto, all leases covering the same, all other contracts calling for the disposition of the Equipment or its use, and all proceeds (collectively, the "Collateral"), provided, however, that any Net Revenues (as defined in the Management Agreement) theretofore received by Payor as Owner under the Management Agreement shall not be deemed part of Collateral. The foregoing security interest is hereby made subject to the consent and approval of the Senior Lienholder to the extent required under the Lien and the Payor hereby agrees to take such steps and execute such documents as may be necessary to obtain such consent and approval and, upon the obtaining thereof, to take such steps and execute such documents as may be necessary to perfect and continue the perfection of such security interest.

Except in connection with a transfer under Section 9 hereof, Payor shall not cause or permit any claim, lien, security interest or other encumbrance to be imposed upon the Equipment except (i) the security interest created hereby and (ii) any claim, lien, security interest or other encumbrance arising from liabilities of or claims against Payee.

4. Prepayment.

Except as provided in Section 5 below, this Note may not be prepaid in whole, or in part, at any time.

5. Deferral, etc.

5.1 Payment of Debts. In the event Debtor pays the Lien or any other debt of Payee (which upon the occurrence and continuation of an Event of Default under the Management Agreement and upon notice to Secured Party, Debtor shall have the right, but not the obligation so to do) whether pursuant to the terms of the Lien or otherwise, all amounts so paid shall be deemed to be prepayments under this Note.

5.2 Deferral. In the event the Management Agreement is terminated prior to the expiration of the term thereof, on account of an Event of Default as defined thereunder, then, notwithstanding anything herein to the contrary, the entire unpaid principal amount of this Note, together with all interest accruing hereunder shall be deferred and shall not be due and payable until April 30, 1994, at which time all such unpaid principal and accrued interest shall become due and payable; provided, however, that Payor may offset from the then outstanding balance of this Note all reasonable expenses which it incurred by reason of an Event of Default by Payee under the Management Agreement, including, without limitation, its expenses in taking possession of the Equipment and arranging for a new Manager thereof to the extent that such amount has not by then been paid to Payor; and provided, further, that notwithstanding such deferral to the extent Payor shall receive any proceeds from the Equipment following a termination of the Management Agreement as aforesaid, it shall be obligated to pay such proceeds to the Senior Lienholder on account of the Lien (and such payment shall be deemed to be prepayments under this Note).

6. Default.

6.1 Event of Default. The term "Event of Default" as used herein (except where expressly referring to an Event of Default as defined in the Lease), shall mean the occurrence and continuation of any one or more of the following events:

(a) The failure of Debtor to promptly pay when due any payment due and payable under any Note which failure continues for 10 days after notice, subject however to the provisions of Section 5 hereof;

(b) The failure of Debtor to promptly and faithfully pay, observe and perform when due any of the Obligations other than those referred to in subsection (a) above or the material breach by Debtor of any material representations, warranties or covenants of Debtor herein or in any of the other Documents, which failure or material breach continues for 30 days after notice;

(c) If Debtor shall:

(i) admit in writing his inability to pay debts generally as they become due;

(ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act;

(iii) make an assignment for the benefit of its creditors;

(iv) consent to the appointment of a receiver for the whole or substantially all of his property;

(v) on a petition in bankruptcy filed against him, be adjudicated a bankrupt; or

(vi) file a petition or answer seeking other aid or relief under any bankruptcy or insolvency laws or any other law for the relief of debtors;

(d) If a court of competent jurisdiction shall enter an order, judgment or decree appointing, without the consent of Debtor, a receiver for the whole or substantially all of his property, or approving a petition filed against him seeking any other relief under any bankruptcy or insolvency laws or any other law for the relief of debtors, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

(e) If, under the provisions of any law for the relief of debtors, any court of competent jurisdiction shall assume custody or control of Debtor or of the whole or any substantial part of his property without the consent of Debtor, and such custody or control shall not be terminated or stayed within sixty (60) days from the date of assumption of such custody or control;

(f) If Debtor shall sell, transfer or otherwise dispose of Collateral in violation of Section 9 below.

6.2 <u>Acceleration</u>. Upon the occurrence of an Event of Default the entire unpaid principal balance and all accrued but unpaid interest under each Note and all other amounts payable to Secured Party pursuant to the Obligations shall, at Payee's option, be accelerated and become and be immediately due and payable and Secured Party shall have all the rights and remedies with respect to the Collateral of a secured party holding a purchase money security interest under the Uniform Commercial Code; provided, however, that such rights and remedies shall be subject and subordinate to the security and other interests and the rights and remedies of all Lien holders and further provided that Secured Party shall not exercise any rights or options under this Section, and an Event of Default shall not be deemed to exist, so long as an Event of Default, as defined in the Management Agreement, by Payee as Manager has occurred and is continuing and for five (5) days after the curing thereof. The Secured Party shall give Debtor reasonable notice of the time and place of any public or private sale or other intended disposition of all or any portion of the Collateral. Debtor agrees that the requirements of reasonable notice shall be met if notice is mailed to Debtor at his address first above written not less than five (5) business days prior to the sale or other disposition. Expenses of retaking, holding, preparing for sale, selling or the like, shall include, without limitation, Secured Party's reasonable attorneys' fees and other legal expenses. Subject to the provisions of Section 6.3 hereof, Secured Party's rights and remedies, whether pursuant hereto or pursuant to the Uniform Commercial Code or any other statute or rule of law conferring rights similar to those conferred by the Uniform Commercial Code, shall be cumulative and not alternative.

6.3 Limited-Recourse. (a) Subject to the provisions of subsection (b) hereof and anything in the Purchase Agreement, the Management Agreement or any other Document to the contrary notwithstanding, Payee agrees to look solely and only to the Collateral for the payment, performance and observance of all of the Obligations, except for the Obligations under the Recourse Notes or under the Remarketing Agreement, and Payee, for itself and its successors and assigns, hereby expressly waives any rights to enforce payment or performance by Payor, his heirs, successors and assigns, or to recover damages for any breach of warranty, covenant or agreement of Payor hereunder or, except for the Recourse Notes or under the Remarketing Agreement, thereunder, other than to proceed against the Collateral in the event of any such Event of Default hereunder.

(b) Notwithstanding anything to the contrary contained in this Note, the Debtor may, at his option, elect to become personally obligated, on a full recourse basis, with regard to principal and interest due and payable under this Note in any particular calendar year or years. Any such election shall be made by written notice to the Secured Party not later than January 15th of the year as to which such election is made and shall apply to all principal and interest due and payable hereunder during such year. In the event any such election is made for any year, the Debtor shall be entitled to a one-eighth percent (1/8%) reduction in the interest rate hereunder with regard to interest payable hereunder during such year.

7. Replacement.

Effective upon any replacement under Section 19 of the Management Agreement (i) all incidents of Secured

Party's security interest in the Replaced Equipment (as defined in the Management Agreement), ipso facto, shall cease and terminate automatically; and (ii) the schedule attached to the Purchase Agreement (the "Schedule") shall be amended, ipso facto, to delete therefrom the Replaced Equipment, as defined in the Management Agreement (and all other information contained therein relating to the Replaced Equipment) and to add thereto the Replacement Equipment, as defined in the Management Agreement (and other information relating to the Replacement Equipment called for by the Schedule), so that the Collateral shall include the Replacement Equipment and not the Replaced Equipment.

8. Notices.

Any notice, request or other communication required or permitted to be given under any of the provisions of this Agreement, shall be in writing and shall be deemed given on the date the same is sent by certified or registered mail, return receipt requested, postage prepaid and addressed to the party for which intended at its or his address set forth at the head of this Agreement together with a copy to one additional addressee as may be requested by notice hereunder or at such other address as such party may hereafter designate to the other in a like notice.

9. Restrictions on Transfer.

Debtor shall not sell, transfer or otherwise convey all or any portion of the Collateral unless he (i) first delivers to Secured Party an acknowledgement executed by the transferee to the effect that the transferee's interest in the Collateral transferred is subject and subordinate to the rights and interests of Secured Party and the Senior Lienholder, (ii) delivers to Secured Party an acknowledgment executed by the transferee to the effect that the transferee assumes the Obligations (to the extent that they are recourse Obligations), (iii) delivers to Secured Party such documents and instruments of the transferee as Secured Party may reasonably request to effectuate provisions (i) and (ii) above, and (iv) delivers such additional documents and acknowledgments as the holder of the Lien shall reasonably require. In addition, Secured Party must be reasonably satisfied that no lien by or against such transferee will attach to the Equipment which is superior to those of the holder of the Lien and Secured Party. Further, Debtor shall not sell, transfer or otherwise convey any portion of the Collateral if the documents creating the Lien prohibit such transfer, unless it first obtains the written consent of the Senior Lienholder, as provided for in such documents.

10. Miscellaneous.

10.1 Financing Statements. Debtor hereby agrees from time to time to execute any financing or other statements in such form as may be necessary to evidence, perfect, and continue the perfection of, a security interest in the Collateral in favor of Secured Party in any and all jurisdictions.

10.2 Course of Dealing. No course of dealing between Payor and Payee, or any delay in exercising any rights or remedies hereunder or under any communication, report, notice or other document or instrument referred to herein, shall operate as a waiver of any of the rights and remedies of Payor or Payee.

10.3 Amendments. This Agreement may be amended or varied only by a document, in writing, of even or subsequent date hereto executed by Payor and Payee.

10.4 Governing Law. This Note shall be governed by and interpreted under the laws of the Commonwealth of Pennsylvania applicable to contracts made and to be performed therein without giving effect to the principles of conflict of laws thereof; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof or of any financing statement or other document relating hereto, if any, as shall be conferred by the laws of the jurisdictions in which this Agreement or such financing statement or other document shall be filed, recorded or deposited.

10.5 Successors and Assigns. This Note shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees.

10.6 Severability. The invalidity or unenforeceability of any provision of this note shall not affect the validity or enforceability of any other provision.

10.7 Headings. The descriptive headings in this note are for convenience of reference only, and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

10.8 Counterparts. This Note shall be executed in three counterparts to be labeled Copy 1, 2 and 3, respectively. Copy 1 shall be deemed an original for all purposes and shall be Payee's copy. Copy 2 shall be deemed an original only for recording purposes under Section 20c of the Interstate Commerce Act. Copy 3 shall be deemed an original for the purpose of indicating Payee's acceptance of the terms of this Note and shall be Payor's copy.

IN WITNESS WHEREOF, the Payor has executed this instrument as of the date and year first above written.

WITNESS: Terry Breen

PAYOR: SHERWIN I. POGRUND

AGREED TO:

FUNDING SYSTEMS RAILCARS, INC.

By: Stanley B. Scheinman Pres [SEAL]

WITNESS: Merle E. Martz

STATE OF ILLINOIS)
: ss.:
COUNTY OF COOK)

On this 27th day of September, 1978, before me personally appeared Sherwin J. Borgund to me personally known, who being by me duly sworn, did depose and say that he is the individual who executed the foregoing Agreement and he acknowledged that the execution of the foregoing Agreement was his free act and deed.

Eileen O. Turner
Notary Public

STATE OF New York)
: ss.:
COUNTY OF New York)

On this 28th day of September, 1978, before me personally appeared STANLEY SCHEINMAN to me personally known, who being by me duly sworn, did depose and say that he is the President of Funding Systems Railcars, Inc. the corporation which executed the foregoing Agreement, that the seal affixed to the foregoing Agreement is the corporate seal of said corporation, that said Agreement was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing Agreement was the free act and deed of said corporation.

Robert D. Marafioti

Notary Public

ROBERT D. MARAFIOTI
Notary Public, State of New York
New York County, N.Y.
Commission Expires March 30, 1980
No. 31-4602686